

§ 1206.701

additional direct costs incurred in searching for or duplicating an Agency record in response to a request under this part. Charges which may be made under this paragraph include, but are not limited to, the transportation of NASA personnel to places of record storage for search purposes or freight charges for transporting records to the personnel searching for or duplicating a requested record.

(g) *Charges for special services.* Complying with requests for special services such as those listed in (g)(1), (2), and (3) of this section is entirely at the discretion of NASA. Neither the FOIA nor its fee structure cover these kinds of services. To the extent that NASA elects to provide the following services, it will levy a charge equivalent to the full cost of the service provided:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail.

(3) Packaging and mailing bulky records that will not fit into the largest envelope carried in the supply inventory.

(h) *Unsuccessful or unproductive searches.* Search charges, as set forth in paragraphs (b) and (c) of this section, may be made even when an Agency record which has been requested cannot be identified or located after a diligent search and consultation with a professional NASA employee familiar with the subject area of the request, or if located, cannot be made available under Subpart 3 of this part. Ordinarily, however, fees will not be charged in such instances unless they are substantial (over \$50.00) and the requester has consented to the search after having been advised that it cannot be determined in advance whether any records exist which can be made available (see §1201206.704) and that search fees will be charged even if no record can be located and made available.

(i) Fees not chargeable.

(1) NASA will not charge for the first 100 pages of duplication and the first 2 hours of search time either manual or electronic except to requesters seeking documents for commercial use.

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(2) If the cost to be billed to the requester is equal to or less than \$15.00, no charges will be billed.

(j) Records will be provided in a form or format specified by the requester if they are readily reproducible in such format with reasonable efforts. If the records are not readily reproducible in the requested form or format, the Agency will so inform the requester. The requester may specify an alternative form or format that is available. If the requester refuses to specify an alternative form or format, the Agency will not process the request further.

§ 1206.701 Categories of requesters.

There are four categories of FOIA requesters: Commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

(a) *Commercial use requesters.* When NASA receives a request for documents appearing to be for commercial use, it will assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Moreover, in the case of such a request, NASA will not consider a request for waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. Commercial use requesters are not entitled to 2 hours of free search time or to 100 free pages of reproduction of documents.

(b) *Education and noncommercial scientific institution requesters.* NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use, but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) *Requesters who are representatives of the news media.* NASA shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must demonstrate that he/she meets the criteria in § 1206.101(o) of this part, and his/her request must not be made for a commercial use. Requesters must reasonably describe the records sought.

(d) All other requesters. NASA shall charge requesters who do not fit into any of the categories mentioned in this section, fees which recover the full direct reasonable cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Moreover, requests from individuals for records about themselves located in NASA's systems of records will continue to be processed under the fee provisions of the Privacy Act of 1974, which permits fees only for reproduction. Requesters must reasonably describe the records sought.

§ 1206.702 Waiver or reduction of fees.

The burden is always on the requester to provide the evidence to qualify him/her for a fee waiver or reduction.

(a) NASA shall furnish documents without charge or at reduced charges in accordance with 5 U.S.C. 552(a)(4)(A)(iii), provided that:

(1) Disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and

(2) It is not primarily in the commercial interest of the requester.

(b) Where these two statutory requirements are satisfied, based upon information supplied by the requester or otherwise made known to NASA, the FOIA fee shall be waived or reduced. Where one or both of these requirements is not satisfied, a fee waiver or reduction is not warranted under the statute.

(c) In determining whether disclosure is in the public interest because it is likely to contribute significantly to

public understanding of the operations or activities of the government, the following considerations shall be applied:

(1) Whether the subject of the requested records concerns "the operations or activities of the government";

(2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) Whether disclosure of the requested information will contribute to "public understanding"; and

(4) Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(d) In determining whether disclosure of the information "is not primarily in the commercial interest of the requester," the following consideration shall be applied:

(1) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(2) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

§ 1206.703 Aggregation of requests.

A requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When NASA has reason to believe that a requester or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, NASA will aggregate any such requests and charge accordingly. NASA will consider that multiple requests made within a 30-day period were so intended, unless there is evidence to the contrary. Where the relevant time period exceeds 30 days, NASA will not assume such a motive unless there is evidence to the contrary. In no case will NASA aggregate multiple requests on unrelated subjects from one requester.